

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

STEVEN WAYNE HARRIS #292-863	:	
Plaintiff	:	
	:	
v.	:	CIVIL ACTION NO. PJM-07-3255
	:	
M & P SALES	:	
Defendant	:	

MEMORANDUM OPINION

On December 4, 2007, Plaintiff, presently incarcerated within Maryland's Division of Correction ["DOC"] and housed at the Metropolitan Transition Center in Baltimore, filed the above-captioned case, seeking money damages and alleging that a catalogue company located in Forest Hill, Maryland failed to provide him with items for which he already has paid.¹ Because he appears to be indigent, plaintiff shall be granted leave to file *in forma pauperis* pursuant to 28 U.S.C. Section 1915(a). For reasons noted herein, the instant lawsuit is subject to dismissal pursuant to 28 U.S.C. § 1915(e)(2).

Under 42 U.S.C. §1983, a defendant must be acting "under color of" state law to be held liable. In the instant matter there is no indication that Defendant, a private company, is in any way involved with the State of Maryland.

The Court notes that this is Plaintiff's first dismissal under Section 1915(e)(2)(B)(ii). Plaintiff may be barred from filing future suits *in forma pauperis* if he is assigned three of these dismissals.²

¹Plaintiff claims that as a result of having spent the money, he is without funds to purchase commissary items and additional food to supplement the poor diet provided by the DOC. To the extent that he seeks damages against DOC personnel for these or other alleged conditions of confinement, Plaintiff may do so by naming the proper defendants and filing a separate action.

²See 28 U.S.C. § 1915(g):

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a

A separate Order shall be entered reflecting the opinion set forth herein.

December 14, 2007

/s/
PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Accordingly, once three such dismissals under § 1915(e) or Rule 12(b)(6) of the Federal Rules of Civil Procedure have been accumulated, a prisoner will be barred from initiating further civil actions *in forma pauperis*, absent extraordinary circumstances.